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Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS

GUIHUA BAI,

Plaintiff,

-vs-

GINTIAN CORPORATION, dba "LIGHT
MASSAGE, ZHONG LI and "Mr. ZHU",

Defendants.

CIVIL ACTION NO. 07-0016

DECLARATION OF STEPHEN J. NUTTING
IN SUPPORT OF MOTION TO COMPEL
DISCOVERY

COMES NOW, Stephen J. Nutting, attorney for the plaintiff, to submit this Declaration in support of plaintiff's motion pursuant to Fed. R. Civ. P. 37 to compel defendants to provide complete responses to plaintiff's First Set of Interrogatories and Request for Production of Documents and to certify pursuant to Fed. R. Civ. P. 37(a) that plaintiff has attempted to confer in good faith to secure the information and documents requested but has not been successful, and under the penalty of perjury, do hereby make the following declaration:

1. I am the attorney of record for Plaintiff in the above captioned case.
2. Plaintiff's case involves claims for unpaid wages and overtime compensation due under

1 an employment contract and pursuant to the CNMI's Minimum Wage and Hour Act; for overtime
2 pay under the Fair Labor Standards Act (FLSA); for constructive termination from employment; and
3 for breach of contract.
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6 3. Defendants answered the First Amended Complaint electronically on July 30, 2007.

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8 4. On November 27, 2007, I spoke directly to the Clerk of the Court's office regarding
9 electronic service to Defendants' counsel of Plaintiff's First Set of Interrogatories and Request for
10 Production of Documents. During this conversation, I informed the Clerk's office that I was aware
11 that the Case Management Scheduling Order stated that no discovery requests should be filed with
12 the Court, but that by e-filing, the Court would be necessary served with such documents.
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15 5. The Clerk of the Court advised me to electronically file the discovery documents with
16 the Court so that the documents could be electronically served on Defendants' counsel who is a
17 Filing User pursuant to the Court's Case Management/Electronic Case Filing system and that they
18 would sort out all other pertinent matters related to the Clerk's office handling of Plaintiff's
19 discovery requests.
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22 6. On November 27, 2007, pursuant to Fed. R. Civ. P. 33 and 34, I electronically served
23 Defendants with Plaintiff's First Set of Interrogatories and Request for Production of Documents.
24 Plaintiff's discovery request contained seventeen (17) interrogatories and sixteen (16) requests for
25 production of documents.
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28 7. On December 28, 2007, Defendants served on my office their Objection to

1 Interrogatories and separately, Defendants' Objection to Production Request in response to
2 Plaintiff's discovery requests. Defendants stated that they objected to both the interrogatories and
3 the requests for production on the basis of Plaintiff's electronic service thereof. Defendants
4 specifically objected to Interrogatory No. 6, No. 7 and No. 14 and Requests for Production Nos. 15
5 and 16. Defendants stated that responses would be made subject to the objections but have failed
6 to make any such responses.
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10 8. A true, accurate and genuine copy of Defendants Objection to Production Request is
11 attached hereto as Exhibit A.
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13 9. A true, accurate and genuine copy of Defendants' Objection to Interrogatories is
14 attached hereto as Exhibit B.
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16 10. On January 4, 2008, during a status conference in this case, Defendants' counsel stated
17 that due to holiday scheduling conflicts, Defendants' objections were filed in order to meet the
18 deadline for responses to discovery and acknowledged that Defendants' responses were inadequate
19 and stated that proper responses would be forthcoming.
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22 11. Defendants have failed to respond further to Plaintiff's discovery requests.
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24 12. On January 18, 2008, pursuant to Fed. R. Civ. P. 37(a), I sent a letter to Defendants'
25 counsel in a good faith attempt to settle the discovery disputes regarding Defendants' failure to
26 produce documents requested in Plaintiffs request for production of documents and failure to answer
27 the interrogatories previously served. I advised Defendants' counsel that I would be happy to meet
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1 with him to resolve any disputes and advised him that Defendants had until January 25, 2008 to
2 discuss the matter further or to provide complete responses to Plaintiff's request for production and
3 interrogatories. I further advised him that if Defendants failed to respond, I would file a motion to
4 compel discovery. Defendants failed to respond in any manner.
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7 13. A true, accurate and genuine copy of Plaintiff's First Set of Interrogatories and Request
8 for Document Production is attached hereto as Exhibit C and incorporated by this reference herein
9 as if set forth in full.
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11 14. Interrogatory No. 6 requests the names and addresses of all witnesses defendants expect
12 to testify. The interrogatory is proper and necessary to identify persons with knowledge of the
13 relevant information related to Plaintiff's claims and Defendants' affirmative defenses.
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16 15. Interrogatory No. 7 requests the identity of any recruiting agencies, manpower agencies
17 or other agencies used by the defendant to recruit or hire workers. Interrogatory No. 7 is proper and
18 relevant to the discovery of all entities involved in establishing the terms and conditions of
19 employment which formed the basis of the contractual employment relationship between the
20 Defendants and Plaintiff. The information sought is relevant and much of it lies at the core of one
21 aspect of this case: Defendants' failure to properly compensate Plaintiff for work performed under
22 an employment contract, Commonwealth Minimum Wage Act and the Federal Fair Labor Standards
23 Act. Complete and detailed disclosure of it is essential. Plaintiff's need for the information
24 outweighs the burden of its compilation and coherent presentation.
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1 16. Interrogatory No. 14 requests the total value of the assets and amount of liabilities of
2 Defendant Gintian Corporation. Interrogatory No. 14 is proper and relevant to discovery of the
3 legitimacy and viability of Defendant Gnitain Corporation or whether it is the alter ego of
4 Defendants Zhu and Li.
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7 17. Request for Production No. 15 requests production of all bank records, bank statements
8 and cancelled checks written of the accounts held in the name of “Gintian Corporation” and/or
9 “Light Massage” or “Gintian Corporation dba Light Massage” or any iteration thereof for the
10 relevant time period. The information sought is relevant and much of it lies at the core of one aspect
11 of this case: Defendants’ failure to properly compensate Plaintiff for overtime work performed under
12 an employment contract, Commonwealth Minimum Wage Act and the Federal Fair Labor Standards
13 Act. Complete and detailed disclosure of it is essential. Plaintiff’s need for the information
14 outweighs the burden of its compilation and coherent presentation.
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18 18. Request for Production No. 16 requests production of copies of any contracts,
19 agreements, receipts, invoice or any other documents with any recruiter, recruiting agency,
20 manpower agency, or other agency which you used to hire and recruit foreign labor to work for you.
21 The information sought is relevant and much of it lies at the core of one aspect of this case:
22 Defendants’ improper deductions from Plaintiff’s compensation resulting in their failure to properly
23 compensate Plaintiff for all work performed under an employment contract, Commonwealth
24 Minimum Wage Act and the Federal Fair Labor Standards Act. Complete and detailed disclosure
25 of it is essential. Plaintiff’s need for the information outweighs the burden of its compilation and
26 coherent presentation.
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1 I hereby swear and affirm under penalty of perjury that the foregoing statements are true and
2 correct and that the facts contained herein are made on personal knowledge, and that I am competent
3 to testify as to all matters stated herein. This declaration is executed on Saipan, on this 19th day
4 of February, 2008.
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7 Law Office of Stephen J. Nutting
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10 /s/
STEPHEN J. NUTTING
11 Attorney for Plaintiff
12 CNMI Bar No. F0164
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